

Minutes

# **Commission to study the Comprehensive Shoreland Protection Act**

**Minutes of January 9, 2006 Meeting**  
**Rm 305, Legislative Office Building, Concord, NH**  
**10:00 am – 12:00 pm**

**Members Present**Interest Represented

House of Representatives  
 NH DES  
 Regional Planning Commissions  
 NH Lakes Association  
 At large waterfront owner  
 At large waterfront owner  
 NH Farm Bureau Federation  
 NH Home Builders and Remodelers  
 UNH (estuary experience required)  
 NH Association of Realtors  
 NH Municipal Association  
 NH Rivers Council  
 NH Timberland Owners  
 Landscaping Consultant  
 NH Conservation Commissions  
 NH Marine Trades Association  
 NH Attorney General  
 NH Wildlife Federation  
 NH Waterworks Association  
 NH Natural Resource Scientists

Representative

David Currier  
 Rene Pelletier (designee)  
 Robert Snelling  
 William Smith PhD  
 Eric Herr  
 Michele Grennon  
 John McPhail  
 Joe Landers  
 Jeff Schloss  
 Tom Howard  
 Carol Granfield  
 Kathryn Nelson  
 Tom Hahn  
 George Pellettieri  
 Diane Hanley  
 Paul Goodwin  
 Jennifer Patterson(designee)  
 James Kennedy  
 Stephen Del Deo  
 Cindy Balcius

**Members absent**

Senate	Carl Johnson
Senate	John Gallus
House of Representatives	Michael Whalley
Office of Energy and Planning	vacant(designee)

**Others in Attendance**Representing

Staff  
 NH Lakes Assoc.  
 Pillsbury Lake Management  
 City of Laconia  
 Self  
 NH DES  
 City of Laconia  
 House of Representatives  
 House Staff  
 Rath & Young  
 Conservation Law Foundation

**Name**

D. Forst  
 Jared Teutsch  
 M. J. Turcotte  
 Carroll Siegars  
 Tom Stawasz  
 Jody Connors  
 Seth Creighton  
 Judith Spang  
 Joel Anderson  
 Susan Hackler  
 Brad Kuster

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**10: 10 am** Meeting opened by Rep. Currier.

Rep. Currier stated that at the previous meeting the Commission had decided to take time in this meeting to hear input from municipal officials regarding their experiences in dealing with the CSPA and Shoreland Program. Rep. Currier asked Ms Granfield to open the discussion.

Ms. Granfield stated that the Town of Meredith, for which she works, has Shoreland regulations which are more stringent than the current CSPA but that individuals may still have to obtain approvals from DES. She stated that her observation was that both the permitting and enforcement processes with the state were long and unpredictable.

Ms. Granfield introduced Shanna Saunders, Seth Creighton and Carroll Siegars as representatives of the City of Laconia in attendance and asked if they would address the Commission.

Ms Saunders opened by stating that they dealt with three major waterbodies: Paugus, which is the Laconia water supply; Winnisquam; and Winnepesaukee. She stated that she did not have a lot of comments but that she felt that difficulties arose in part because there were so many little intricacies in addition to recent changes to the CSPA and there was a lack of a standard interpretation of these issues and changes. She also noted that the woodland buffer was very hard to enforce as was the issue of porches being converted to living space.

Mr. Siegars introduced himself as the Code Enforcement Officer and stated that he was frustrated by continued stream erosion, the enforcement of setbacks and a lack of pamphlets and guidance documents available to code enforcement officials.

Mr. Creighton noted that the forestry rules in Laconia were stricter than those in the CSPA and stated that perhaps the CSPA need to be strengthened to match. He compared the Laconia and state requirements. The CSPA allows the cutting of 50% of the basal area whereas Laconia allowed no tree cutting. He did note that Laconia did not protect vegetation with a trunk or stem that was less than 4 inches in diameter.

Ms. Saunders noted that enforcement was difficult and while Laconia enforced 100% of its own regulations it did not enforce the CSPA because the cost was too much.

Ms Patterson noted the towns could enforce the CSPA and keep any fines assessed and that the towns of Wakefield and Freedom have done so successfully.

Ms. Nelson asked who interpreted the law in these cases.

Ms. Patterson stated that the cases were processed through the courts and therefore a judge would interpret the law.

Mr. Smith stated that he felt it was the responsibility of the state to pursue enforcement.

Mr. Snelling asked if the requirements of the CSPA could be rolled into the local building permit process. A member of the Commission cited the prohibition of unfunded mandates found in section 28A of the State Constitution. Mr. Snelling recognized the unfunded mandate issue but asked what cost if any it would be to the town.

Mr. Goodwin noted that there were no local standards for docks in Laconia and suggested that perhaps they should add standards for local review.

Mr. Snelling stated that docks were a Wetland permitting issue and not a Shoreland issue. He restated his question, asking what it would cost the towns to administer the CSPA.

Ms. Patterson noted that one difficulty of having the towns administer the CSPA was getting a consistent interpretation from one town to the next.

Mr. Schloss noted that while the towns may be empowered to enforce the CSPA now they may not be enforcing it at all.

Ms. Saunders noted that there was a significant cost to the town incurred as time spent conducting inspections, contacting the owner and doing follow up work.

Ms. Balcius noted that some local setbacks were grandfathered.

Rep. Currier stated that all towns had a 50 ft setback.

Ms. Forst explained that the change to the CSPA in 2002 prohibited new towns from setting lesser primary building setbacks but allowed those towns with lesser setbacks to retain them.

Ms. Hanley noted that this had occasionally resulted in confusion in Laconia.

Ms. Grennon asked if the grandfathering was ever lost.

Multiple Commission members answered that it was not.

Mr. Pelletier noted that DES had difficulty keeping track of which towns had lesser setbacks and other regulations within the protected Shoreland.

Mr. Smith asked if Mr. Pelletier felt that there needed to be a new state level permit.

Mr. Pelletier answered, "Please, no."

Mr. Del Deo stated that on the issue of education versus enforcement he preferred education. He noted that DES lacked staff and that there needed to be better coordination between the towns and state.

Mr. Siegars stated that he could try to enforce things like deck conversion issues and that sometimes it was easy but if things escalated and people hired attorneys it be to time consuming and expensive for the town to handle and cases got dropped.

Ms. Saunders stated that she felt that the towns need to play a more active role. She stated that while she understood the state lacked staff she felt that the state needed a greater presence on waterbodies that involved multiple towns.

Mr. Del Deo noted that some towns were also still dropping the ball by issuing inappropriate permits.

Mr. Goodwin state that he felt that state established, minimum baseline standards were needed and that vague requirements such as the 20 year period over which cutting was measured need to be removed from the CSPA.

Ms. Balcius asked if anyone had spoken to any representatives from towns in Maine about their effectiveness.

Mr. Snelling stated that he had talked to some contacts in Maine and found they every town was required to have a Code Enforcement Officer and the towns must enforce because the state did not want to do zoning.

Ms. Balcius asked if there were fees.

Mr. Snelling said he was not sure what, if any, fees were assessed.

Ms. Granfield noted that some Maine town did not have Code Officers on there staff but contracted with Code Officers instead.

Mr. Smith asked if there were examples of common, state-wide codes being enforced by the towns such as BOCA.

Mr. Siegars noted that ICC had replaced BOCA.

Mr. Smith asked if it was possible for a town to have no codes.

Several Commission members answered yes.

Mr. Snelling asked how many towns did not have codes.

Mr. Siegars stated that many of the towns that have Code Enforcement Officers still lack the necessary manpower.

Mr. Pelletier noted that the towns in NH seemed to want local control and for this reason the state avoided setting state-wide building standards but noted that the state now needs a uniform standard.

Ms. Patterson noted that the standards needed to be clearer. She further stated that the state could not require that towns have zoning.

Mr. Smith asked if a uniform standard could work without a new permit process.

Mr. Pelletier stated that he felt a permit would not be necessary.

Mr. Smith stated that he felt that the woodland buffer and setbacks need to be improved.

Ms. Balcius stated that she thought buffers would be difficult to address.

Mr. Goodwin stated that he thought that the expansion of existing non-conforming should be allowed.

Mr. Snelling asked how this would make things clearer and stated that he felt allowing expansion would be wrong.

Rep. Currier stated that he did not think the prohibition on expansion included height.

Ms. Patterson explained that it did include expansion.

Mr. Pelletier stated that DES was now involved in zoning which was an uncomfortable position for DES as many issues were not environmental.

Ms. Hanley noted that her frustration was based in the lack of education and the fact that contractors were often not held accountable for their actions.

Mr. Goodwin said that the standards need to be clearer. He suggest a limit on the percentage of impervious surface area allowed and finding a new standard to replace the basal area standard, which he describe as "horrible".

Mr. Pelletier stated that the state was very sensitive to property rights issues but water quality issues were real and needed to be addressed. He suggested that a no cut buffer could be required. There would be no permit required, just a limit to be adhered to and enforced.

Ms. Patterson noted that a limit on the impervious surface area allowed might address several concerns at once.

Mr. Smith briefly described the point system utilized by Maine and the variation of it to be adopted by the Town of Moultonborough. He suggested that the Commission should solicit a speaker from Maine and suggested Steve Kahl who had worked in Maine but now taught at Plymouth State.

Ms. Balcius stated that she thought the speaker should have direct experience with the Maine regulations.

Ms. Grennon asked if there would be standards set for grandfathering.

Rep. Currier asked if anyone had questions for the representatives from Laconia.

Mr. Goodwin asked if there were any permits required for tree cutting.

Mr. Creighton answered no.

Mr. Smith asked what the next step should be.

Rep. Currier asked if the Commission thought it would be good to hear from a speaker from Maine.

Ms. Granfield asked if it would be for the March meeting and stated that she would be in contact with local and state officials in Maine within the week and could get a speaker for the next meeting.

Mr. Smith stated that there seem to be 5 main themes: setbacks; buffers; dimensions; education; and impervious surfaces.

Ms. Balcius asked if the rest of the act was ok or if there were more points of concern.

Mr. Snelling stated that there were more points of concern.

Ms. Patterson suggested that the Commission could go through the existing Act and identify which parts to keep and which needed work.

Rep. Currier asked if the group was too big for that purpose.

Mr. Howard stated that he did not like the idea of breaking into smaller groups and he did not believe the realtors would support the concept of state-wide zoning.

Rep. Spang asked a question from the audience. She asked if the issue of aesthetic and the blocking of views would be raised and addressed.

Ms. Balcius noted that this was a real issue and should be addressed.

Mr. Schloss noted that aesthetics were an economic interest and did affect property values.

Ms. Grennon asked if it was within the Commission's charge to review this issue.

Ms. Patterson stated that it was as it was an issued already recognized by the Act.

Mr. Goodwin asked how aesthetics could be measured and stated that he felt this could only make things more confusing, not less.

Rep. Currier stated that it was something that should be considered.

Ms. Hanley asked if aesthetic loss would have an economic impact. If it would, then it should be addressed.

Ms. Grennon stated that while she recognized that aesthetics could be an issue she was not sure it should be a priority.

Mr. Del Deo stated that he agreed that it was an issue to be considered.

Ms. Nelson asked if they should be looking at items in the Act to be improved or if they should focus on the administration of the program.

Rep. Spang stated that aesthetics could be viewed 2 ways; those looking in versus those wanting to look out.

Ms Granfield stated that these issues were in the CSPA but they needed to be streamlined and clarified.

Mr. Snelling stated that even if the standards were clarified someone had to enforce and apply them. He felt that the "first Line" should be identified clearly.

Ms. Patterson stated that who you went to as the authority may depend on the issue involved.

Mr. Snelling stated that someone needed to be in charge.

Rep. Currier agreed that the Commission needed to assign responsibility for the implementation of the CSPA.

Mr. Pelletier stated that while aesthetics are an issue they can be partially addressed though impervious surface area limits and perhaps a height limit. He agreed the assigning responsibility was important.

Mr. Connor addressed the Commission from the audience. He stated the he had taken several Senators and Representatives on a tour of Lake Winnepesaukee and that several had commented on not wanting NH to look like New Jersey. They did not like all of the walls, lawns, and clear cuts they observed.

Mr. Schloss stated that aesthetics went beyond water quality and touch upon economic and tourism issues.

Mr. Herr stated that the level of discussion showed that aesthetics were an issue that had to be addressed.. He cited the “view tax” as further evidence of the issue. He stated that while he had gone to some effort to revegetate his shorefront he understood wanting a view.

Mr. Goodwin noted that people on the lakes pay large amounts of property taxes and should be allowed to enjoy their property.

Ms. Nelson stated that the Act appeared to try to address the issue through the woodland buffer but due to interpretation it was ineffective. She asked if people should only be able to build large houses on large lots and noted that the realtors probably wouldn’t like it.

Mr. Howard agreed that the realtors wouldn’t like that restriction. He recognized that aesthetics were a legitimate issue.

**12:15** The meeting was closed

Future Meetings Rm 305, Legislative Office Building, Concord

February 13, 2006, 10:00 – 12:00

March 13, 2006, 10:00 – 12:00

April 10, 2006, 10:00 – 12:00